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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 25, 2001

APPLICATION OF

CPV CUNNINGHAM CREEK LLC

CASE NO. PUE010477

For approval of electrical generating facilities pursuant to Va. Code § 56-580(D), for waiver of certain filing requirements, for confidential treatment of certain information, and for a certificate of public convenience and necessity pursuant to § 56-265.2, for an exemption from Chapter 10 of Title 56, and for interim authority to make financial expenditures

ORDER FOR NOTICE AND HEARING

On August 31, 2001, CPV Cunningham Creek LLC ("CPV" or "the Applicant")¹, filed an application requesting that the State Corporation Commission ("Commission") grant the Applicant approval, pursuant to § 56-580(D) of the Code of Virginia, and 20 VAC 5-302-20 of the Virginia Administrative Code, to construct the Cunningham Creek Electric Generating Facility ("the Facility") in Fluvanna County, Virginia, about eight miles north of Palmyra. CPV also seeks a waiver from certain of the Commission's information requirements as set forth in 20 VAC 5, Chapter 302, and requests confidential treatment of specific

¹ CPV, a Maryland-based company, is a wholly-owned subsidiary of CPV Competitive Power Ventures Holdings, LLC ("CPV Holdings").

financial and technical information. In addition, CPV states that, if necessary, it requests (i) a certificate of public convenience and necessity to construct the Facility pursuant to § 56-265.2(B), (ii) an exemption from the provisions of Chapter 10 of Title 56 of the Code pursuant to Va. Code § 56-265.2(B), and (iii) interim authority, pending the Commission's approval of the Facility, to make financial expenditures for the Facility and to undertake such permitting and site development work as CPV may determine to be appropriate to ensure the timely installation and completion of the Facility.

CPV is seeking the Commission's approval to construct and operate a 520 MW, combined cycle electric generating facility in Fluvanna County. The site encompasses approximately 388 acres of land in three contiguous parcels on Route 636, about three-quarters of a mile west of its intersection with Route 53. The site is located at the intersection of utilities necessary for the operation of the Facility and the transmission of the electricity that the Facility will generate. Both natural gas pipelines and electric transmission lines are already present at the site.

In its application, CPV also requests an exemption from the provisions of Chapter 10 of Title 56 ("Chapter 10") of the Code of Virginia ("Code") pursuant to § 56-265.2 of the Code. In support of its request, CPV states that electricity generated by

the Facility will be sold for resale and will therefore be subject to rate regulation by the Federal Energy Regulatory Commission. The Applicant further states that no regulated utility whose rates are established under Chapter 10 has any financial or ownership interest in CPV, hence no portion of the cost of the proposed Facility will be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10.

Finally, CPV requests that the Commission grant it interim authority, pending the Commission's approval of the Facility, to make financial expenditures for the Facility and to undertake such permitting and site development work as CPV may determine to be appropriate to ensure the timely installation and completion of the Facility.

In support of its application, CPV states that the Facility will have no material adverse effect upon the rates paid by customers of any regulated public utility in Virginia, or upon the reliability of electric service provided by any regulated utility. The Applicant states that the Facility will advance the public interest by providing economic benefits to Fluvanna County through tax revenue and employment opportunities. Further, CPV states that the Facility will advance the public interest by helping to meet the growing demand for electric

power in Virginia. CPV also states that all aspects of the Facility are designed to minimize impacts to the environment.

NOW THE COMMISSION, having considered the application, is of the opinion and finds that the matter should be docketed, notice of the application should be given to the public, interested persons should have an opportunity to comment or to participate in this matter, the Commission Staff should investigate CPV's proposal and present its findings to the Commission, and a hearing should be scheduled in this matter. Consistent with our determination in Case No. PUE010313,² we will treat this request as an application for a certificate of public convenience and necessity pursuant to § 56-265.2 of the Code since it was filed prior to January 1, 2002.

Accordingly, IT IS ORDERED THAT:

(1) CPV's application for a certificate of public convenience and necessity is docketed and assigned Case No. PUE010477.

(2) Pursuant to 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure ("the Rules"), a Hearing Examiner is appointed to conduct all further proceedings in this matter.

(3) A public hearing for the purpose of receiving evidence relevant to the application is scheduled for January 9, 2002, at

² We stated on pages 3-4 of our Final Order in Case No. PUE010313 that § 56-580 D of the Restructuring Act supplants § 56-265.2 on and after January 1, 2002.

10:00 a.m. in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia.

(4) CPV shall promptly make a copy of its application and other materials available to the public who may obtain copies, at no charge, by making a request in writing to counsel for the Applicant, Cassandra Sturkie, Esquire, Latham & Watkins, 555 Eleventh Street, N.W., Suite 1000, Washington, D.C. 20004-1304. The application and other materials filed in this docket may also be reviewed during regular business hours at the Commission's Document Control Center, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia.

(5) On or before October 2, 2001, the Applicant shall serve a copy of its application and this Order, by personal delivery or by first-class mail, postage prepaid, to: The Honorable John Paul Woodley, Jr., Secretary of Natural Resources, P.O. Box 1475, Richmond, Virginia 23218; Dennis H. Treacy, Director, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009; and to each investor-owned and cooperative electric utility in the Commonwealth as listed in Appendix A to this Order.

(6) On or before October 12, 2001, the Applicant shall cause the following notice to be published as display advertising (not classified) in newspapers having general

circulation in the counties of Fluvanna, Albemarle, Louisa, and
Goochland:

NOTICE OF AN APPLICATION OF
CPV CUNNINGHAM CREEK LLC
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO
CONSTRUCT AN ELECTRIC GENERATION
FACILITY IN FLUVANNA COUNTY, VIRGINIA
CASE NO. PUE010477

On August 31, 2001, CPV Cunningham Creek LLC ("CPV" or "the Applicant"), filed an application requesting that the State Corporation Commission ("Commission") grant the Applicant a certificate of public convenience and necessity pursuant to § 56-265.2 of the Code of Virginia ("the Code") to construct a power plant, the Cunningham Creek Electric Generating Facility ("the Facility"). CPV is seeking the Commission's approval to construct and operate a 520 MW, combined cycle electric generating facility in Fluvanna County, Virginia, about eight miles north of Palmyra. The site encompasses approximately 388 acres of land in three contiguous parcels on Route 636, about three-quarters of a mile west of its intersection with Route 53. The site is located at the intersection of utilities necessary for the operation of the Facility and the transmission of the electricity that the Facility will generate. Both natural gas pipelines and electric transmission lines are already present at the site.

In its application, CPV also requests an exemption from the provisions of Chapter 10 of Title 56 ("Chapter 10") of the Code of Virginia ("Code") pursuant to § 56-265.2 of the Code. In support of its exemption request, CPV states that electricity generated by the Facility will be sold for resale and will therefore be subject to rate regulation by the Federal Energy Regulatory

Commission. The Applicant further states that no regulated utility whose rates are established under Chapter 10 has any financial or ownership interest in CPV, hence no portion of the cost of the proposed Facility will be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10.

Finally, CPV requests that the Commission grant it interim authority, pending the Commission's approval of the Facility, to make financial expenditures for the Facility and to undertake such permitting and site development work as CPV may determine to be appropriate to ensure the timely installation and completion of the Facility. Interested parties and the Staff may comment on this request for interim authority on or before October 22, 2001.

In support of its application, CPV states that the Facility will have no material adverse effect upon the rates paid by customers of any regulated public utility in Virginia, or upon the reliability of electric service provided by any regulated utility. The Applicant states that the Facility will advance the public interest by providing economic benefits to Fluvanna County through tax revenue and employment opportunities. Further, CPV states that the Facility will advance the public interest by helping to meet the growing demand for electric power in Virginia. CPV also states that all aspects of the Facility are designed to minimize the impacts to the environment.

A public hearing for the purpose of receiving evidence relevant to the application is scheduled for January 9, 2002, at 10:00 a.m. in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia.

A copy of the application and other materials may be obtained, at no charge, by making a request in writing to counsel for the Applicant, Cassandra Sturkie, Esquire, Latham & Watkins, 555 Eleventh Street, N.W., Suite 1000, Washington, D.C. 20004-1304. The application and other materials filed in this docket may also be reviewed during regular business hours at the Commission's Document Control Center, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia. A copy of the Commission's Order establishing the proceedings, outlining the details for participation, and setting forth the complete procedural schedule is available from the Commission's website, www.state.va.us/scc/caseinfo/order.htm.

On or before November 13, 2001, any person or entity desiring to participate in this proceeding as a respondent as provided by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure shall file an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth above and shall be a party to the proceeding. All notices of participation shall contain: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent now known; and (iii) the factual and legal basis for the action.

On or before November 20, 2001, any respondent shall file an original and fifteen (15) copies of the prepared testimony and exhibits the respondent intends to present at the hearing with the Clerk of the Commission at the address set forth above.

All comments, notices of participation, and prepared testimony and exhibits shall refer to Case No. PUE010477. Copies of the same shall be, in addition to being filed

with the Clerk of the Commission,
simultaneously served on counsel for CPV at
the address set forth above.

CPV CUNNINGHAM CREEK LLC

(7) On or before October 22, 2001, any interested party and the Staff may comment on CPV's request for interim authority to make financial expenditures and undertake permitting and site development work, by filing such comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. A copy of the same shall simultaneously be served on counsel for CPV at the address set forth in Ordering Paragraph (4) above. All comments shall refer to Case No. PUE010477.

(8) On or before November 13, 2001, any person or entity desiring to comment in writing on CPV's application for a certificate of public convenience and necessity and an exemption from Chapter 10 shall file such comments with the Clerk of the Commission at the address set forth in Ordering Paragraph (7) above. A copy of the same shall simultaneously be served on counsel for CPV at the address set forth in Ordering Paragraph (4) above. All comments shall refer to Case No. PUE010477. Any person desiring to make a statement at the public hearing concerning the application need only appear in the Commission's second floor courtroom in the Tyler Building at the address set forth in Ordering Paragraph (3) above.

(9) On or before November 13, 2001, any person or entity desiring to participate in this proceeding as a respondent as provided by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure shall file an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth in Ordering Paragraph (7) above and shall be a party to the proceeding. All notices of participation shall refer to Case No. PUE010477 and shall contain: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Copies of the same shall be simultaneously served on counsel for CPV at the address set forth in Ordering Paragraph (4) above.

(10) On or before November 20, 2001, any respondent shall file an original and fifteen (15) copies of the prepared testimony and exhibits the respondent intends to present at the hearing with the Clerk of the Commission at the address set forth above. All prepared testimony and exhibits shall refer to Case No. PUE010477. Copies of the same shall be simultaneously served on counsel for CPV at the address set forth in Ordering Paragraph (4) above.

(11) Commission Staff shall analyze CPV's application and, on or before December 18, 2001, file with the Clerk of the

Commission an original and fifteen (15) copies of the prepared testimony and exhibits the Staff intends to present at the public hearing.

(12) On or before January 3, 2002, the Applicant shall file with the Clerk of the Commission an original and fifteen (15) copies of any testimony it expects to introduce in rebuttal to any direct prefiled testimony of the Commission Staff and respondents. The Applicant also shall hand-deliver a copy of such rebuttal testimony to Commission Staff.

(13) At the commencement of the hearing scheduled herein, the Applicant shall provide to the Commission proof of the notice and service required by Ordering Paragraphs (5) and (6) herein.

(14) The Applicant and respondents shall respond to written interrogatories or data requests within ten (10) days after the receipt of such requests. Except as so modified herein, discovery and hearing preparation procedures shall be in accordance with Part IV of the Rules.